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No. 92-1670

In The

Supreme Court of the United States

October Term, 1992

CLIFFORD FERGUSON,

Petitioner,

vs.

THE UNION CITY DAILY MESSENGER, INC. and DAVID BARTHOLOMEW,

Respondents.

On Petition for Writ of Certiorari To The Tennessee Supreme Court

RESPONDENTS' BRIEF IN OPPOSITION

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TABLE OF CONTENTS

Page

Table of Authorities ii

Statement of the Case 1

State Court Decisions 3

Absence of Malice 9

Statements in Petition 12

Response to Argument 16

Conclusion 21

TABLE OF AUTHORITIES

Page

CASES:

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986) 16, 20, 21

Byrd v. Hall, 847 S.W.2d 208 (Tenn. 1993) 21

Black v. Cutter Laboratories, 351 U.S. 292, 76 S.Ct. 824, 100 L.Ed. 1188 (1956) 9

Bose Corporation v. Consumers Union of United States, Inc., 692 F.2d 189, 1st Cir., 1982 Affirm., 466 U.S. 493, 80 L.Ed.2d 502 (1984) 17, 18, 19

Campbell v. Matlock, 749 S.W.2d 748 (Tenn.App. 1988) 4

Emmco Insurance Company v. Beacon Mutual Indemnity Company, 204 Tenn. 540, 322 S.W.2d 226 (1959) 4

Enterprise Irrigating District v. Farmers Mutual Canal Company, 243 U.S. 157, 37 S.Ct. 318, 61 L.Ed. 644 (1917) 9

Harte-Hanks Communications v. Connaughton, 491 U.S. 657, 109 S.Ct. 2678, 105 L.Ed.2d 562 (1989) 11, 17, 19

New York Times Company v. Sullivan, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964) ..... *passim*

Press, Inc. v. Verran, 569 S.W.2d 435 (Tenn. 1978) 3, 5, 6, 7, 19

St. Amant v. Thompson, 390 U.S. 727, 88 S.Ct. 1323, 20 L.Ed.2d 262 (1968) 11

TENNESSEE CODE ANNOTATED:

Section 47-50-109, Tennessee Code Annotated 1, 2

TABLE OF AUTHORITIES – Continued

Page

CONSTITUTIONS:

Constitution of the United States, First Amendment 3, 6, 8, 19

Constitution of Tennessee, Article I, Section 19 .....3, 6, 8, 19

STATEMENT OF THE CASE

The petitioner, Ferguson,[1] filed his complaint in the Circuit Court of Obion County, Tennessee, against the Union City Daily Messenger, Inc.,[2] a newspaper, and David Bartholomew, one of its reporters and later its editor.

The complaint was cast in four counts. First, he alleged statutory interference with a contractual relationship. Section 47-50-109, Tennessee Code Annotated. In the second count, he pleaded common law interference with employment and intentional interference with an advantageous relationship. The third count charged defamation. Outrageous conduct was averred in the fourth count.

The Trial Court entered summary judgment on all counts.

In the Tennessee Court of Appeals, the petitioner presented for review the Trial Court's action in granting summary judgment as to counts one and two of the complaint dealing with statutory and common law interference with a contractual relationship and count three

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[1] The petitioner, Clifford Ferguson, was the plaintiff in the Trial Court and will sometimes be referred to as petitioner or Ferguson. The respondents, Union City Daily Messenger, Inc. and David Bartholomew, were defendants in the Trial Court and will sometimes be referred to as "Messenger" and "Bartholomew" respectively, or as respondents.

[2] The Union City Daily Messenger, Inc. has no parent nor subsidiary company.

alleging defamation. The petitioner did not appeal count four dealing with outrageous conduct.

The State Court of Appeals affirmed the Trial Court in granting summary judgment on the statutory and common law interference with contract counts and reversed on the defamation count.

The respondents were granted permission by the Tennessee Supreme Court to appeal on the defamation count.

The Supreme Court affirmed the judgment of the Court of Appeals in granting summary judgment on interference with employment counts for the reasons stated in the opinion of the intermediate court. The State Supreme Court reversed the decision of the Court of Appeals on the defamation count and affirmed the Trial Court in granting summary judgment on all counts and dismissing the complaint.

The petitioner described himself in the complaint as the purchasing agent for Obion County Government, although he had other titles from the time of his employment in October of 1978. Nowhere in his complaint did the petitioner allege that he filed his action as a private citizen and that he was not a public figure or a public officer. He sought damages based upon his alleged common law rights, with the exception of the statutory interference with a contractual relationship, Section 47-50-109, Tennessee Code Annotated.

In their amended answer, the defendants placed in issue all of the essential allegations in the complaint.[3] They affirmatively pleaded that the articles published in the respondent, Messenger, were about a public figure and were true and highly newsworthy. They also defended on the ground that the articles were substantially true and were published without malice. The respondents affirmatively pleaded that the publications were made without either malice or actual malice and were constitutionally protected under the First Amendment to the Constitution of the United States and Article I, Section 19, of the Constitution of Tennessee.

STATE COURT DECISIONS

In dismissing the defamation count, the Trial Court discussed *New York Times Company v. Sullivan*, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964) and *Press, Inc. v. Verran*, 569 S.W.2d 435 (Tenn. 1978). The Trial Judge stated that the issue before the Court was whether there was actual malice and it was not the function of the Court " . . . to determine what editorial space or size should be allocated for various news items in the local newspapers", and that " . . . erroneous statement is inevitable in free debate, and that it must be protected if the freedoms of expression are to have the breathing space that are needed".

[3] The amended answer was lengthy and pleaded numerous denials and defenses.

The State Court of Appeals found, upon its review of the facts, that there was a disputed factual issue regarding the scope of Ferguson's responsibilities as purchasing agent which was determinative of his status as a public official. The Court reasoned that Ferguson had a right to a jury trial on factual questions involving legal issues in spite of recognizing that, under the *New York Times* doctrine, the determination of whether the petitioner was a public official is a question of law. Consequently, the State Court of Appeals concluded that the Trial Judge should not have granted summary judgment and reversed for a trial on the merits to have a jury decide the duties of Ferguson and whether he was a public official. The decision of the Appeals Court holding that a jury should decide whether Ferguson was a public official was obviously erroneous.

The State Court of Appeals also discussed the petitioner's theories of statutory and common law interference with a contractual relationship. The seven elements which are required in an action for procurement of a breach of contract were enumerated.[4] Among the essential elements is the requirement that the alleged wrongdoers must have acted maliciously. In this connection, the Court discussed the affidavit of Jean K. Green which is relied upon heavily by the petitioner. The Court of Appeals found that there was an issue based upon

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[4] *Emmco Insurance Company v. Beacon Mutual Indemnity Company*, 204 Tenn. 540, 551, 322 S.W.2d 226, 231 (1959); and *Campbell v. Matlock*, 749 S.W.2d 748, 751 (Tenn.App. 1988) set forth specifically the seven mandatory elements required in those actions.

Green's affidavit as to whether Bartholomew intended to induce the breach of Ferguson's contract but the affidavit did not show malice. On the issue of malice, the Court said:

> "We note that although the Green affidavit may raise some question as to Bartholomew's intent, it does not show that Bartholomew acted maliciously."

Consequently, there was a concurrent finding of the Trial Court and the Court of Appeals that there is not any proof of malice.

The State Supreme Court reversed the State Court of Appeals holding that it was a question of law for the Court to decide as to whether the petitioner was a public official within the meaning of *New York Times Company v. Sullivan*, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964) and *Press, Inc. v. Verran*, 569 S.W.2d 435 (Tenn. 1978). In disposing of the issue, the Court declared:

> "The evidence in this case requires no further analysis to reach the conclusion that plaintiff was a public official within the meaning of Article 1, Section 19, of the Tennessee Constitution and the First Amendment to the United States Constitution. The Court of Appeals construed the factual issue too narrowly. There may be, as stated by that Court, a genuine issue of fact regarding the precise scope of Ferguson's responsibilities; however, the responsibilities acknowledged by Ferguson himself establish him as a public official and officer of the government. The right of the press to criticize government and its agents is not bound by the

> niceties of titles or the legalistic definition of duties."

The Tennessee Supreme Court went on to hold that the disputed fact about the scope of Ferguson's duties was not determinative. Whether Ferguson had the primary duty to prepare warrants for signature and mail the signed warrants to the vendors was not a crucial issue. The Court reasoned:

> "The efficient management of financial matters is crucial to the proper operation of government. Based upon the record, Ferguson appeared to have, and in fact did have, substantial responsibility for control over the conduct of the financial affairs of the county, which is an integral part of government. Ferguson was, therefore, a public official."

The State Supreme Court in reaching its decision relied upon the First Amendment of the Constitution of the United States; Article I, Section 19, Constitution of Tennessee; and *Press, Inc. v. Verran*, 569 S.W.2d 435 (Tenn. 1978).

Article I, Section 19 of the Tennessee Constitution declares:

> "That the printing presses shall be free to every person to examine the proceedings of the Legislature; or of any branch or officer of the government, and no law shall ever be made to restrain the right thereof. The free communication of thoughts and opinions, is one of the invaluable rights of man, and every citizen may freely speak, write, and print on any subject, being responsible for the abuse of that liberty. But in

> prosecutions for the publication of papers investigating the official conduct of officers, or men in public capacity, the truth thereof may be given in evidence; and in all indictments for libel, the jury shall have a right to determine the law and the facts, under the direction of the court, as in other criminal cases."

As a matter of state law, the State Supreme Court has construed Section 19 in *Press, Inc. v. Verran*, as providing greater protection than the First Amendment to the Constitution of the United States. For that reason, a field welfare worker was held to be a public official because the worker had the power to take action to cause children to be taken from their parents.

In *Press, Inc. v. Verran*, the Court described who is a public official under state law and asserted:

> "While the term 'public official' has not been defined with precision, it causes us no particular concern. Generally the title and nature of the office will provide the answer. However, we find nothing magical, mysterious or mystical in the terminology. The occupant of any position in any branch of government who exercises any public function is subject to the *New York Times* rule as to all conduct in his official capacity or as to any conduct that might adversely affect his fitness for public office, if he has or 'appear(s) to the public to have, substantial responsibilities for or control over the conduct of governmental affairs.' *Rosenblatt*, supra.
>
> This does not necessarily apply only to high public position. Any position of employment that carries with it duties and responsibilities affecting the lives, liberty, money or property of

> a citizen or that may enhance or disrupt his enjoyment of life, his peace and tranquility, or that of his family, is a public office within the meaning of the constitutional privilege."

Relying on that decision, the Tennessee Supreme Court held that Ferguson was a public official within the meaning of Article I, Section 19 of the Constitution of Tennessee, and the First Amendment of the Constitution of the United States. The Court reasoned that (1) the responsibilities acknowledged by Ferguson himself establish him as a public official and officer of the government; (2) Ferguson's duties throughout his employment by the county included substantial responsibility with regard to the financial and business affairs of the county;[5] (3) the

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[5] Ferguson prepared his job description which states: "The purchasing agent is the buyer for the County, obtaining the proper equipment, materials, supplies and services needed by the County departments. The Purchasing Agent will prepare solicitations, obtain quotations, conduct competitive bids for purchase and evaluate responses, awarding contracts to those bidders that meet the specifications and are in the best interest of the County. He will also issue and sign purchase orders, sign warrants for the County and the Highway Department, attend meetings, on occasion, that will better communications with the public and that are in the best interest of the public. He will also keep inventory of County property, talk continuously with the citizens of Obion County about the well being of this County and will serve as County Director of TOSHA (Safety) for the County." (Bartholomew Deposition, Volume 1, p. 303, Exhibit 31) He testified that he signed county warrants in payment of county bills as "Director of Finance". (Ferguson Deposition, pp. 186-188) He also testified that he was accurately quoted in the

efficient management of financial matters is crucial to the operation of government; and (4) Ferguson, according to the record, had substantial responsibility and control over the financial affairs of the county, which is an integral part of government. It is clear that he was properly characterized as a public official under the First Amendment of the Constitution of the United States. In addition, he was a public official under the Tennessee Constitution which is broader than the federal constitution, and, therefore, the decision of the State Supreme Court rests upon an adequate state ground. *Black v. Cutter Laboratories*, 351 U.S. 292, 76 S.Ct. 824, 100 L.Ed. 1188 (1956); *Enterprise Irrigating District v. Farmers Mutual Canal Company*, 243 U.S. 157, 37 S.Ct. 318, 61 L.Ed. 644 (1917). All of the foregoing warrant the dismissal of the petition because the petitioner was a public officer within the meaning of the federal and state constitutions.

ABSENCE OF MALICE

One of the principal arguments of the petitioner is that the State Supreme Court did not discuss actual

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Messenger stating: "When we get the bills in this office, we pay them." (Ferguson Deposition, pp. 146-147)
He regularly attended budget committee meetings of the County Commission from the time he was hired and participated in discussions about the budget. The meetings were held in the Juvenile Courtroom or in petitioner's office. (Affidavit of Ferguson, Transcript, Volume 2, p. 123; Affidavit of Ferguson, Transcript, Volume 3, p. 137; Affidavit of Burnett, Transcript, Volume 3, p. 63; Affidavit of Puckett, Transcript, Volume 3, p. 102)

malice. This insistence is bottomed on the affidavit of Jean K. Green.[6]

Both the Trial Court and Court of Appeals considered the entire record and the Appeals Court specifically discussed the affidavit. Both Courts found that common law malice was not established and an essential ingredient of the petitioner's claims for statutory and common interference with petitioner's employment contract was absent. These holdings constituted a current finding of fact which is not reviewable under state law. However, if there was any doubt about an absence of common law malice, the State Supreme Court put this issue to rest by affirming the judgment of the Court of Appeals on the issue of " . . . interference with employment . . . for the reasons stated in the opinion of that Court." (Petitioner's Appendix, p. 21)

In the absence of malice, there could not be "actual malice" as required by *New York Times Company v. Sullivan*, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964). In the public official cases, the expanded rule of constitutional malice is that the publication was made with knowledge " . . . that it was false or with reckless disregard of whether it was false or not". This Court in a number of cases has clarified what is meant by falsity and publications recklessly made.

The proof in this case falls far short of actual malice. The argument of the petitioner has two basic thrusts. First, he insists that he was identified by incorrect titles

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[6] The affidavit is copied in the petitioner's appendix, pp. 61-63.

and as the person responsible for paying the county's bills. Secondly, the affidavit of Green is proof of actual malice. In the context of the proof in this case, the State Supreme Court said that the press " . . . is not bound by the niceties of titles or the legalistic definition of duties," and reasoned that it must take the broad view of evidence from undisputed material facts, as previously discussed.

As to the Green affidavit, the Court dealt with it by adopting the reasons given by the Court of Appeals in holding that "it may raise some question of intent" but it does not prove malice, and based on that finding, the State Supreme Court had no reason to discuss actual malice which is much more than common law malice from which this Court departed in *New York Times Company v. Sullivan*, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964); *Harte-Hanks Communications v. Connaughton*, 491 U.S. 657, 109 S.Ct. 2678, 105 L.Ed.2d 562 (1989).

At the most, it might be said, which the respondents deny, that there was negligence in Bartholomew's reporting. Negligence or reasonableness is not the test as decided in *New York Times*. Even reckless conduct is not measured by what a reasonably prudent man would have published or would have investigated before publishing. *St. Amant v. Thompson*, 390 U.S. 727, 88 S.Ct. 1323, 20 L.Ed.2d 262 (1968).

For those reasons, the State Supreme Court had no need to discuss actual malice.

STATEMENTS IN PETITION

The respondent will address some of the statements made by the petitioner in his "Statement of Case".[7]

A. He argues that the petitioner hired Ms. Graham to be his secretary, but he did not hire Ms. Bond and she was not his secretary. (Petition for Certiorari, pp. 11-13) He placed substantial reliance on his job description in support of his argument that Ms. Bond was not his secretary. The same exhibit which was filed containing the petitioner's job description also sets forth that of Ms. Bond's. It reads:

> *"Secretary to Purchasing Department*
>
> The Secretary to the Purchasing Department will perform general office duties such as typing, filing and answering the phone. The Secretary will prepare and issue payroll warrants, will issue purchase orders and complete purchase orders, will prepare and mail warrants to pay purchase orders for goods received, total and receipt all warrants received from the Trustee's office at the end of each month, and prepare requests for bids on purchases, when required by law." (Bartholomew Deposition, Volume 1, p. 303, Exhibit 31)

As everyone in the courthouse and the public knew, Ms. Bond was the secretary in the purchasing department as shown by her job description. The job descriptions do

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[7] The petitioner has generally made statements of fact which may not be exactly accurate and the respondents will comment on some of them, but will not make a detailed statement of facts. A response is being made only as considered reasonably necessary to respond to the petition.

not support his disavowals. Her job description also answers the petitioner's contentions that Bond was a co-employee and that he only knew of her duties when he read her job description. His own testimony refutes these arguments.

B. The petitioner states that Bartholomew held himself out as the eyes and ears of Obion County government. The statement is inaccurate because he testified that he and other reporters tried to inform the Messenger's readers of "what went on in the county government of Obion County".[8] This was a promotion printed on a card displayed on the front of the Messenger's newspaper racks.

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[8] His deposition reads:

"Q. Mr. Bartholomew, did you generally hold yourself out as the eyes and ears of Obion County people and county government?

A. I think the readership of the *Union City Daily Messenger* looked to the *Union City Daily Messenger,* including myself and other reporters, to tell them what went on in the county government of Obion County.

Q. Did you not actively promote yourself as being the eyes and ears of Obion County citizens and county government?

A. That was a promotion that ran on a rack card on the front of a newspaper rack.

Q. And, when did that run?

A. I don't know when that was created.

Q. Do you recall how long it ran?

A. No. I'm sure it ran intermittently until probably the first of September when I left the *Messenger* from the time it started.

C. The petitioner portrays Bartholomew as being intimately familiar with the county's budgets. (Petition for Certiorari, p. 18) When asked if he ever saw an Obion County budget, Bartholomew testified that he looked at totals to see whether there were any significant line item changes.[9] His testimony indicates some familiarity with county budgets but not that he was intimately familiar with them.

Q. And, you don't recall when it started.
A. No, I don't. It was one of several such promotional items about various people on the staff that ran in rotation on various racks.
Q. But, in fact, county government was your beat.
A. Basically, yes, sir.
Q. And, you felt it was your obligation to keep the citizens informed as to what was going on in county government.
A. Yes, sir; I did. I think that's the obligation of any journalist." (Bartholomew Deposition, Volume 1, pp. 179-180)

[9] The deposition of Bartholomew recites:
"Q. Did you ever see a copy of an Obion County budget?
A. I did.
Q. And, did you ever sit down and read a copy of the budget of Obion County?
A. Probably not every word of it, no; I looked at it.
Q. All right. Tell me, every year, did you make it a practice of at least seeing or reading a copy of the budget of Obion County?
A. After I began to cover county government on a regular basis, yes.
Q. All right. And, you stated you didn't read every word of it. What was your practice with regard to reading the budgets?

D. The petitioner also complains about Bartholomew telling him, after the sheriff was reprimanded for buying for his departments without submitting a purchase order, "Well, you have won another one." It is difficult to understand why the petitioner considers the statement is significant unless it is to show that Bartholomew was praising the petitioner for doing his job.

E. The chair of the committee which investigated Ferguson stated that he had done nothing wrong in his job performance. (Petitioner for certiorari, p. 25) The statement fails to include her concern about the two signatures which appeared on county warrants (checks).[10] The warrants were signed by the County Executive and the Director of Finance, i.e., namely the County

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A. Normally, I just looked at totals and see if there were any significant line item changes.
Q. In looking to see if there were any significant line item changes, would you look at every page or every department?
A. Normally." (Bartholomew Deposition, p. 259)

[10] The petitioner testified, in part, as follows:
"Q. And why did you attend the meeting, if you knew what they were going to do?
A. I just wanted to be there to see what they had to say.
Q. All right.
A. And to defend my position.
Q. All right. What did you do in defense of your position?
A. I told them that they had not found one thing wrong with my job performance, and Jean Cohen agreed, but she said, there's two signatures on the checks, and neither of which is Treva's." (Ferguson Deposition, pp. 77-78)

Executive, Robert Jarvis, and Director of Finance, Clifford Ferguson."

F. The petitioner erroneously states that his original complaint, ". . . specifically pled the actual malice requirement as enunciated by this Court in *New York Times Company v. Sullivan*, 376 U.S. 254 (1964)". (Petition for Certiorari, pp. 27-28). The complaint is lengthy but it does not contain any allegation concerning actual malice nor does it cite or refer to *New York Times*. The respondents defended on the grounds that the publications were constitutionally privileged by the First Amendment of the Constitution of the United States and Article I, Section 19, of the Constitution of Tennessee. Neither party pleaded the Fourteenth Amendment.

The opinions of the State Courts have set forth the salient material facts gleaned from the depositions and affidavits. They are relied upon by the respondents, although many of them are conclusory. The State Supreme Court did not consider the petitioner's affidavits and deposition only but weighed all of the facts in the manner required by *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

RESPONSE TO ARGUMENT

The petitioner states that this Court should grant certiorari and hold that (1) a jury issue is presented on actual malice, or (2) the petitioner is not a public figure (official).

He seeks the writ, relying upon *Harte-Hanks Communications, Inc. v. Connaughton*, 491 U.S. 657, 109 S.Ct. 2678, 105 L.Ed.2d 562 (1989) and *Bose Corporation v. Consumers Union of United States, Inc.*, 692 F.2d 189, 1st Cir., 1982 affirm., 466 U.S. 493, 80 L.Ed.2d 502 (1984).

Harte-Hanks, according to the petitioner, stands for exploring the publisher's state of mind by circumstantial evidence. His contention is that Bartholomew's state of mind is reflected by his failure to check his news articles from documentation readily available to him. His hypotheses is that additional investigation by Bartholomew would have shown that the petitioner was not at fault for the nonpayment of the county's bills. As a result of interviews in late May, 1987, Ferguson allegedly told Bartholomew of his version of the true facts but they were not published. The petitioner states that for these reasons, the Court should find actual malice and order a jury trial.

The decisions of this Court and the State Supreme Court are not so shallow.

The factual scenario in this case differs dramatically from those in *Harte-Hanks*. That case dealt with scheming in a political campaign in which the plaintiff, Connaughton, allegedly participated in "dirty tricks" by offering a job and other benefits to a grand jury witness for her assistance in an investigation. The appeal was from a jury verdict in favor of Connaughton.

In the case at bar, there is nothing which can be said to be "dirty tricks". The gist of Bartholomew's articles was substantially true. Thus, it cannot be maintained that the articles contained the requisite falsity under the *New*

York Times doctrine. There is no showing of any degree of culpability in this case. The worst that can be said is that Bartholomew's research could have possibly been more carefully done. This may possibly be negligence but it is not actual malice.

If the underlying tenet of Ferguson's claim is understood, he insists that *Harte-Hanks* required the Court to accept everything Ferguson said in their conversation as true and Bartholomew should have accepted the petitioner's version and ended an important series of articles about the county's nonpayment of its bills and the petitioner's accountability in handling the county's finances.

The Supreme Court of Tennessee correctly characterized the evidence, as it had the duty to do, declaring that the Trial Court was correct in finding that the evidence did not show "malice".

The petitioner also relies upon *Bose Corporation v. Consumers Union of United States, Inc.*, 692 F.2d 189 (1st Cir., 1982), affirm., 466 U.S. 493, 80 L.Ed.2d 502 (1984). In that case, the Circuit Court of Appeals reversed the judgment of the District Court where damages were assessed. The case was appealed to this Court and the decision of the First Circuit was affirmed. Significantly, this Court did not adopt the reasoning of the Court of Appeals.

This Court found in *Bose*, as it should in this case, " . . . that there is a significant difference between proof of actual malice and mere proof of falsity, and (2) that such additional proof is lacking in this case."

If the theory of the petitioner were adopted, the risk of undue self-censorship and the suppression of truthful

material would be imposed upon the media in the area of reporting upon public affairs. That result is unacceptable in our society.

The facts in this case differ substantially from those in *Harte-Hanks* and *Bose*, although the rationale of the latter may be held to apply here because this Court found that there was no proof of actual malice.

Secondly, the petitioner also complains that the Supreme Court of Tennessee should have held that the petitioner is not a public official. As previously stated, the State Supreme Court relied heavily upon *Press, Inc. v. Verran*, 569 S.W.2d 435 (Tenn. 1978) where the Court said the case " . . . developed further the criteria" for making the determination of who is a public official. *Press, Inc.* states that Article I, Section 19, of the Tennessee Constitution is broader than the First Amendment of the Constitution of the United States, but the Court did not find it necessary to discuss the " . . . difference of protection afforded, to the extent it may exist". In holding that a junior social worker in the local county office of human services was a public official, the Court announced that the test is not where the person fits in the hierarchy of public officials, and irrespective of her " . . . rather low" rank, she was a public official within the meaning of the state's libel law.

In reaching its conclusion in *Press, Inc.*, the Court relied upon the reasoning of the line of cases generated by *New York Times*. The *Press, Inc.*, decision clearly adopts and expands the federal rule in defining who is a public officer within the meaning of state libel law. In giving its definition of a public officer, the State Court said that it is

a person in any position of public employment " . . . that carries with it duties and responsibilities affecting the lives, liberty, money or property of a citizen or that may enhance or disrupt his enjoyment of life, his peace and tranquility, or that of his family . . . ". Certainly, Ferguson's duties and responsibilities fell squarely within that definition. Strangely, the petitioner does not cite any case in support of his contention that he was not a public officer.

The petitioner has failed to cite any authority which actually supports his reasons for seeking the writ of certiorari to review the facts in this case.

The State Supreme Court has performed its duty by studying the record made in the Trial Court and deciding as a matter of law that the facts do not establish actual malice and that the petitioner was a public official.

The Trial Court properly found that the clear-and-convincing requirement must be considered in ruling on the motion for summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

Essentially, some of the same factual claims were advanced against Liberty Lobby as are made in this case. The complaint charged numerous inaccuracies and that there had been a failure to verify adequately information.[11] Tennessee's highest Court weighed all of the evidence and found malice lacking. It follows that there

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[11] It was also alleged that some of the sources of the articles " . . . were patently unreliable" in *Liberty Lobby*.

could not be any basis or reason for a jury trial as to actual malice.

In discussing *Liberty Lobby* in a very recent case, the Tennessee Supreme Court adopted its reasoning. *Byrd v. Hall*, 847 S.W.2d 208 (Tenn. 1993).[12] The case reiterates the rule " . . . that the mere existence of *some* alleged factual dispute between the parties would not defeat a motion for summary judgment".

Accordingly, the State Supreme Court applied the appropriate evidentiary standard in affirming the Trial Court's entry of summary judgment.

CONCLUSION

In conclusion, this Court should deny the petition for certiorari and/or dismiss this action.

Respectfully submitted,

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[12] The Court granted the appeal in *Byrd* " . . . to establish a clearer and more coherent summary judgment jurisprudence."